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May 8, 2023

VIA ECF

The Honorable Sarah Netburn
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Set Capital LLC, et al., v. Credit Suisse Group AG, et al.,*
No. 18-CV-02268 (AT) (SN)

Dear Magistrate Judge Netburn:

We write on behalf of Lead Plaintiffs to briefly respond to Defendants' letter reply dated today, May 8, 2023 (Dkt. No. 292, the "Reply") in order to correct the record. Nothing in Defendants' Reply supports Defendants' letter motion to quash (Dkt. No. 288, the "Motion").

First, with regard to Defendants' argument regarding mootness, on April 18, 2023, Lead Plaintiffs issued the notice of subpoenas for the seven subpoenas. As set forth in Lead Plaintiffs' opposition to Defendants' Motion (Dkt. No. 290, the "Opposition"), these subpoenas were timely issued prior to the April 19, 2023 fact discovery deadline. Shortly thereafter, Lead Plaintiffs began receiving productions from and communications regarding the subpoenas. Six of the seven subpoenas are already essentially resolved.

Specifically, on April 26, 2023, ProShare Capital Management LLC and ProShares Trust II informed Lead Plaintiffs that they did not have any responsive documents. Similarly, on May 4, 2023, Eagle Seven, LLC informed Lead Plaintiffs that it also did not have any responsive documents. Accordingly, there are no documents to produce to Defendants from any of these three entities.

On May 2, 2023, J.P. Morgan Securities LLC served its responses and objections to the subpoena. On May 5, 2023, Lead Plaintiffs held a meet and confer with counsel for J.P. Morgan Securities LLC. Lead Plaintiffs are continuing with the meet and confer process regarding these responses and objections. Accordingly, there are no documents to produce to Defendants from J.P. Morgan Securities LLC at this time.

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On May 3, 2023, TJM Investments, LLC, Marquette Partners LLC, and Marquette Partners, LP produced documents in response to the subpoenas.¹ These documents were subsequently uploaded to Lead Plaintiffs' third-party discovery platform and produced to Defendants on Sunday, May 7, 2023.

As six of the seven subpoenas have been resolved, there can be no harm or prejudice to Defendants from those subpoenas and Defendants' arguments with regard to them are moot. And the recipient of the one outstanding subpoena has already served its responses and objections and met and conferred with Lead Plaintiffs, so there can be no harm or prejudice to Defendants from Lead Plaintiffs finalizing resolution of that subpoena. Indeed, as set forth in Lead Plaintiffs' Opposition, Defendants have not articulated *any* actual harm or prejudice from any of the subpoenas, resolved or not.

Second, while it is true that Defendants filed their Motion the day the subpoenas were due, May 2, 2023, they conveniently omit that their Motion was filed at 6:19 p.m., well after the 10 a.m. return time for the subpoenas. Thus, assuming *arguendo* that Defendants even have standing to quash the subpoenas, which they do not, their Motion is untimely.

Finally, contrary to their insinuation in their Reply, prior to filing their Motion, Defendants never requested information regarding whether the Lead Plaintiffs had received any responses to the subpoenas. Rather, Defendants only first sought such information at 8:52 p.m. last night – five days after Defendants filed their Motion and two days after Lead Plaintiffs filed their Opposition.

Accordingly, and for the reasons set forth in their Opposition, Lead Plaintiffs respectfully request that the Court deny Defendants' Motion.

Respectfully submitted,

/s/ Laura H. Posner

Laura H. Posner

*Counsel for Lead Plaintiffs Set Capital
LLC, Stefan Jager, Aleksander
Gamburg, and Apollo Asset Limited,
and the Section 11 Class*

¹ As to Marquette Partners, LLC and Marquette Partners, LP, no further documents are expected as the entities stated that they were able to only identify one document. Concerning TJM Investments, LLC, Lead Plaintiffs' expert is reviewing the production to ensure that Lead Plaintiffs have received the electronic documents that they seek through the subpoena. Notwithstanding, Lead Plaintiffs do not currently anticipate further productions from TJM Investments, LLC, excepting a certification of a regularly conducted activity for the documents already produced.